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Supreme Court of the United States

OCTOBER TERM, 1980

THE PEOPLE OF THE STATE OF NEW YORK,

Petitioner,

—v.—

ROGER BELTON,

Respondent.

ON WRIT OF CERTIORARI TO
THE NEW YORK STATE COURT OF APPEALS

BRIEF FOR THE AMERICAN CIVIL LIBERTIES UNION AND THE NEW YORK CIVIL LIBERTIES UNION, *AMICI CURIAE*

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INTEREST OF AMICI*

The American Civil Liberties Union is a nationwide, non-partisan organization of over 200,000 members, dedicated solely to defending the principles of freedom and democracy embodied in the Bill of Rights. The New York Civil Liberties Union is the New York State affiliate of the ACLU, having a membership of 20,000. It is similarly dedicated to defending our fundamental constitutional freedoms.

Central to those freedoms is the right to be free from unreasonable government search and seizure protected by the Fourth Amendment of the United States Constitution. That Amendment erects a critical barrier between the government and the citizen, and

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*Letters of consent to the filing of this brief from the parties have been lodged with the Clerk of the Court.

it defines the standards which the government must follow whenever it seeks to invade "the right of the people to be secure in their persons...and effects."

The ACLU and NYCLU have repeatedly urged upon this Court a "strict construction" of that Amendment. The New York Court of Appeals has commendably adhered to such a strict construction in this case, narrowly construing the search incident to arrest exception to the general Fourth Amendment rule that warrantless searches are per se unreasonable. New York and the United States, amicus curiae, on the other hand, urge the Court to abandon more than a half-century of settled law, and to cut the exception loose from the reasons which justify it. We file this brief to urge the Court to reject that invitation, and to protect the rights guaranteed by the Fourth Amendment.

SUMMARY OF ARGUMENT

The Fourth Amendment generally condemns as unreasonable warrantless searches, subject to a few "jealously and carefully drawn" exceptions. The extent of each exception is limited by the considerations which justify it. The warrantless search of the jacket in this case is sought to be justified as a search incident to arrest. However, neither of the two considerations which justify that exception - the security of arresting officers, and the need to prevent the destruction of evidence - applies where, as the highest court of New York has found here, an arrestee has neither access to nor control of the item to be searched. The arresting officer concededly perceived no danger, and declined even to draw his service revolver, admitting that he undertook the search of the jacket "to check for further contraband" (A-21). Moreover, since the defendant had neither

access to nor control of the jacket, there was no possibility that evidence which might be in it could be destroyed. Because neither of the considerations which justify the search incident to arrest exception to the warrant requirement apply here, the exception is unavailable, and evidence seized in the warrantless search must be suppressed.

STATEMENT

The facts and procedural posture of this case have been extensively and accurately described by the parties and the United States. Nevertheless, because certain details concerning the arrest are essential to disposition of the suppression issue under our view of this case, we will describe certain facts omitted in those factual recitations.

When the officer smelled marijuana in the vehicle he had stopped for speeding, he requested the car's occupants to exit the car. All four men promptly and without objection

got out of the two-door car (A-32), and the officer then frisked them and placed each around the car "so they would not be in physical touching area of each other...." (A-19). The officer "had no reason to," and did not, remove his service revolver (A-32). Subsequently, after the officer retrieved an envelope with traces of marijuana, he gathered the four arrestees together, read them their Miranda rights, and thoroughly searched them, including the contents of their pockets (A-21). At that point, the officer had smelled marijuana, found traces of marijuana in a manila envelope on the car floor, and retrieved marijuana cigarette butts from the car's ashtrays (A-38-41). [1] Also at that

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[1] Petitioner Belton and the three other arrestees pleaded guilty to a charge of unlawful possession of marijuana, and no question regarding the search of the envelope or the ashtrays is before the Court. See Petitioner's Brief at 7 n.3.

point, the vehicle's occupants had been formally placed under arrest while they were standing outside the vehicle (A-46-48).

The officer then re-entered the vehicle "to check for further contraband" (A-21), and saw a zippered leather jacket lying on the rear seat. He patted it down for weapons and did not feel any (A-42). He then unzipped one pocket and discovered evidence of cocaine. After the search of the jacket was completed, the officer took the jacket to his patrol car and kept it in official custody until the preliminary proceedings were completed (A-49-50).

On the basis of these facts, the New York Court of Appeals reversed the Appellate Division and trial court, which had both upheld the search of the jacket. The holding of the Court of Appeals is embodied in the first paragraph of the Chief Judge's majority opinion:

A warrantless search of the zippered pockets of an inaccessible jacket may not be upheld as a search incident to a lawful arrest where there is no longer any danger that the arrestee or a confederate might gain access to the article. (A-77).

ARGUMENT

A WARRANTLESS SEARCH FOR EVIDENTIARY ITEMS INCIDENT TO ARREST VIOLATES THE WARRANT CLAUSE OF THE FOURTH AMENDMENT IF THE OBJECT SEARCHED IS A PERSONAL ITEM NOT WITHIN THE ACCESS OR CONTROL OF THE ARRESTEE.

The Court has "jealously and carefully drawn" only a few, narrowly defined exceptions to the Warrant Clause of the Fourth Amendment, Jones v. United States, 357 U.S. 493, 499 (1958), and has limited those exceptions to the reasons which led to their creation. See, e.g., United States v. Robinson, 414 U.S. 218, 227-228; Warden v. Hayden, 387 U.S. 294, 310 (1967). The warrant requirement "is not an inconvenience to be somehow 'weighed' against the claims of

police efficiency". Search warrants are "or should be, an important working part of our machinery of government, operating to check the 'well-intentioned but mistakenly overzealous executive officers' who are part of any system of law enforcement." Arkansas v. Sanders, 442 U.S. 753, 758 (1979), quoting Coolidge v. New Hampshire, 403 U.S. 443, 481 (1971).

Sixty-seven years ago, in Weeks v. United States, 232 U.S. 383 (1914), the Court first referred to the now recognized warrant exception permitting warrantless search incident to arrest. The reasons which led to the creation of the search incident to arrest exception to the warrant requirement, and hence the policies that "mark...its proper extent", Chimel v. California, 395 U.S. 752, 762 (1969), are the safety of the arresting officers, and the need to prevent the destruction of evidence in "the area

within [an arrestee's] immediate control." Id. at 763;[2/] see also United States v. Chadwick, 433 U.S. 1, 15 (1977).

Since Weeks, the Court has carefully analyzed the facts of arrest and search cases with the single purpose of reconciling the privacy rights protected by the Warrant Clause with the twin practical exigencies inherent in arrest confrontations which led to the search incident to arrest exception. See Chimel v. California, supra. The Court

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[2/] The Court in Chimel defined the area "within...immediate control" to mean "the area from within which [an arrestee] might gain possession of a weapon or destructible evidence", thereby closely limiting the scope of the exception for warrantless searches to the twin justifications which gave rise to it. 395 U.S. at 763. Also, after exhaustive analysis, the Court overruled two cases which had permitted searches incident to arrest to extend "beyond the area from which the person arrested might obtain weapons or evidentiary items." 395 U.S. at 766. To the extent it meaningfully differs from the established Chimel test, which petitioner New York concedes applies in this case, the test sought by the

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has committed itself to detailed case-by-case analysis of (1) the time elapsed between the arrest and search, (2) the distance between the arrestee and the search, (3) the dominion and control arrestees may have retained over the articles searched, and (4) the privacy arrestees may have expected in the materials searched.

From these considerations, as analyzed in many differing factual circumstances, the Court has drawn a well-established set of requirements governing searches incident to arrest. In Chimel v. California, supra, and its progeny, United States v. Robinson, 414 U.S. 218 (1973); Gustafson v. Florida, 414 U.S. 260 (1973); Cupp v. Murphy, 412 U.S. 291 (1973); and Adams v. Williams, 407 U.S. 143 (1972),

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Solicitor General here is essentially the now rejected test applied in those overruled cases, Harris v. United States, 331 U.S. 145 (1947) and United States v. Rabinowitz, 339 U.S. 56 (1950).

the Court has settled the following basic rules: (1) Persons under arrest may be searched completely [3] both for weapons that could threaten arresting officers [4] and for evidence that could be hidden or destroyed.[5] (2) The area and objects immediately within the reach of an arrestee may be searched for the same reasons, so long as this search is undertaken contemporaneously with the arrest and there remains an actual threat that the arrestee's access to the area and objects within reach may provide him with a weapon or opportunity to hide or destroy evidence.[6]

3/United States v. Robinson, 414 U.S. at 234-235.

4/Id. at 234.

5/Id.; United States v. Chadwick, 433 U.S. at 15.

6/United States v. Chadwick, 433 U.S. at 15, ("Once law enforcement officers have reduced luggage or other personal property not immediately associated with the person of the arrestee to their exclusive control, and there

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In any other circumstances, even when an officer has seized an object suspected of containing contraband, the Fourth Amendment requires the officers to obtain search warrants before they invade the luggage, home, or any other possession of an arrestee. Chimel v. California, supra; United States v. Chadwick, supra. Unless the conditions giving rise to the search-incident-to-arrest exception are met, a search is per se invalid under the Fourth Amendment if no warrant is obtained, even though the search may be characterized other-

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is no longer any danger that the arrestee might gain access to the property to seize a weapon or destroy evidence, a search of that property is no longer an incident of the arrest"); Chimel v. California, 395 U.S. at 762-768.

wise as wholly "reasonable" under the Fourth Amendment. United States v. Chadwick, supra; Mincey v. Arizona, 437 U.S. 385 (1978); United States v. United States District Court, 407 U.S. 297, 315-321 (1972).

These well-established rules, based on principles espoused since the turn of the century, are routinely implemented in state and federal courts. Although this type of search may be more common than any other, [7] there is relatively little doubt in the vast majority of cases whether a warrant should have been obtained, and the Court of Appeals decided the case 5-2 in accord with what it saw as well-settled Supreme Court precedent. Indeed, the United States rather forthrightly concedes that the case turns on whether the

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7/T. Taylor, Two Studies in Constitutional Interpretation, 48 (1969); American Law Institute, Model Code of Pre-Arraignment Procedure, 493-494 (1975), both cited in the Amicus Brief of the United States.

Court will continue to apply the established "exclusive control" test referred to in United States v. Chadwick, 433 U.S. at 15, and Arkansas v. Sanders, supra, 442 U.S. at 763 n.11, "or whether a different standard should govern." Brief for United States at 3.

The exact scope of the warrant exception in this case - a search of a jacket found on the back seat of an unoccupied car shortly after the formal arrest of four men - requires careful examination of the facts of this case, the justification which gave rise to the exception of searches incident to arrests from the warrant requirement, and other relevant Fourth Amendment doctrines.

We note, first, that this is not a search of a car and thus covered by the exception authorizing certain automobile searches. See, e.g., Arkansas v. Sanders, supra; Chadwick v. United States, supra. Moreover, evidence constituting probable

cause for arrest had already been obtained, and arrests made, when the officer pursued the search further by re-entering the car. Third, the search consisted of opening the zippered packets of a personal article of clothing in the back seat of an empty car, not frisking a person. Fourth, the initial outer search of the jacket eliminated the possibility that it contained a weapon. 8/ And sixth, there was no security threat perceived by the officer.

Of the undisputed facts, perhaps the most important is that the jacket was searched after the formal arrests while it

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8/ Although we note this factor under the circumstances of this case, we do not suggest that the officer was entitled to "frisk" the empty jacket then in his possession. Nonetheless, the fact that he did so and found no evidence of weapons wholly removes, we believe, any "security" justification for the opening and search of the pockets, even if the jacket had been within reach or control of the arrestees, as it was not.

was lying on the middle of the rear seat of a two-door vehicle (A-32). Apparently the officer climbed back into the vehicle to search while the arrestees stood waiting outside the car. 9/ The conclusion is inescapable, and the highest court of New York so found (A-77, A-81 n.2) that the jacket was out of the arrestees' reach, beyond "the area 'within [their] immediate control'" 10/ as defined by Chimel, and within the exclusive control of the officer at the time it was searched and seized. Compare United States v. Chadwick, supra, and

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9/The officer's decision to re-enter the two-door car to reach into the back seat when he had four arrestees scattered around the car, no partner to cover him, and a holstered weapon, confirms that he was not motivated by concern for his security. The maneuver if anything increased, rather than reduced, any risk he may have faced.

10/United States v. Chadwick, 433 U.S. at 14, quoting from Chimel v. California, 395 U.S. at 763; Arkansas v. Sanders, 442 U.S. at 763 n.11.

Arkansas v. Sanders, supra, (doctrine of search incident to arrest does not justify search of arrestee's possessions not within his immediate possession or control).

Several other considerations in this case suggest the inapplicability of the exception here. One important practical aspect of this case is that respondent's jacket was movable, not a fixture to which he had access such as a closet or chest of drawers. As the Court of Appeals found, once the arrestees left the automobile as instructed, the jacket was no longer within the arrestees' access or control, like the luggage in Arkansas v. Sanders or the footlocker in Chadwick. At that point, under the well-established "immediate control" test and the reasoning which created the Chimel exception, warrantless search was no longer justifiable. Moreover, once the officer had examined the jacket for

weapons, it was plainly not only not within the arrestees' access or control, but in fact within the exclusive control of the arresting officer. Certainly from that point the jacket no longer presented any threat to the officer or to the evidentiary integrity of the arrest. The officer even removed the jacket and secured it in his patrol car. 11/ Under Chimel and Chadwick, the officer was plainly required to obtain a warrant to search the contents of the seized item.

The undisputed facts of this case disclose that the search was undertaken not

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11/The policies behind the search incident to arrest exception - security and preservation of evidence - allow the police to move arrestees away from fixed objects that might conceal weapons or destructible evidence. Pennsylvania v. Mimms, 434 U.S. 106 (1977). Conversely, where, as here, the police can and do easily move transportable items so that they are not within the control of the arrestee, the narrow policies behind the exception do not justify a warrantless search. Arkansas v. Sanders, supra; United States v. Chadwick, supra.

for the security or integrity-of-evidence concerns which alone justify the exception, but rather as an evidentiary fishing trip after the arrest was complete. The officer conceded he was not looking for a weapon. (A-42). Rather, he was looking for more or other evidence, not evidence necessary to sustain the charges for which the car's occupants had been arrested. Had this been a search of the respondent while he was wearing his jacket, United States v. Robinson, supra, and Gustafson v. Florida, supra, would clearly have permitted an unrestricted search for weapons or evidence. But the arrest exception does not justify general warrantless searches of the possessions or home of an arrestee, as opposed to searches of the person or possessions within immediate reach. See Agnello v. United States, supra; Preston v. United States, 376 U.S. 364 (1964); Peters v. New York, 392 U.S. 40, 66 (1968); United

States v. Robinson, 414 U.S. at 234.

In privacy terms, there is no meaningful distinction between respondent's jacket with zippered pockets, and the suitcase and footlocker in Sanders and Chadwick. Although the jacket would be subject to a warrantless search if it had been worn, unworn it was a personal possession, the sealed pockets of which deserve at least as much privacy protection as luggage. Also, a jacket is even more easily removed to a secure area in a police vehicle than is a suitcase or footlocker, and thus presents far less inconvenience to the officer who follows the warrant procedure required by Chadwick and Sanders. 12/

12/After the Court in Chadwick rejected search incident to arrest as a basis for the government's warrantless intrusion in that case, the state did not even argue search incident to arrest in Sanders, though

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Reversal of the decision below on this record would promptly lead arresting officers to "rummage" personal possessions that are beyond the reach or control of the arrestee, Chimel v. California, 395 U.S. at 76, that are within the exclusive control of the officer, United States v. Chadwick, supra, and that could easily he removed by the officer for a subsequent search pursuant to a warrant, id. The distinction carefully

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the search of the trunk of the arrestee's taxi in Sanders took place contemporaneously with the arrest. The Court in Sanders noted that "[t]he State has not argued that respondent's suitcase was searched incident to his arrest, and it appears that the bag was not within his 'immediate control' at the time of the search." Arkansas v. Sanders, 442 U.S. at 763, n.11. This recent statement of the entrenched test of "immediate control" to distinguish between proper and improper warrantless arrest searches implicitly rejects the argument in the government's amicus brief. See also n.2 supra.

drawn in Robinson and other cases between searches of the "area within the control of the arrestee" and searches of areas not within the immediate control of the arrestee [13] would be eviscerated. If the Court were to abandon the "immediate control" rule and allow searches of private possessions already controlled by the arresting officer, as the United States urges, arresting officers could routinely seize luggage and other personal articles and otherwise invade the privacy of arrested persons.

We also note that affirmance of the judgment below, and the established rule relied on by the New York Court of Appeals, would not detract from the search for truth in criminal investigations. Law enforcement officers can always do what the Court

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13/ United States v. Robinson, 434 U.S. at 224.

required in Sanders and Chadwick - take the unsearched items with them and secure warrants for later search. There is no law enforcement justification, therefore, for jettisoning the Fourth Amendment's procedural safeguards in this case.

CONCLUSION

Because the search was undertaken of an easily movable item in which the respondent had a clear privacy interest, but which was no longer within his possession, reach, or control, and because the officer undertook the search not to protect either his security or the integrity of evidence, but solely for the purpose of discovering additional evidence, the decision of the New York Court of Appeals should be affirmed.

Respectfully submitted,

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